

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

MICHAEL HAYWARD,)
)
Plaintiff,)
)
vs.) Case No. 1:06CV86 HEA
)
STEAK N SHAKE,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment due to Failure to Name the Proper Party Defendant, [Doc. # 13]. Plaintiff has not responded to the motion in accordance with the Court's Local Rules. For the reasons set forth below, the motion to dismiss is granted.

Plaintiff filed this action against "Steak N Shake" for alleged violations of Title VII of the Civil Rights Act of 1964. Summons and the Complaint were served on the Steak N Shake restaurant at the address given by plaintiff as his former employer's address. Plaintiff's former employer, however, is Draco Restaurants, Inc. d/b/a Steak N Shake Cape Girardeau, a Steak N Shake franchisee. Under the provisions of Title VII, suit must be brought against plaintiff's employer. As such,

plaintiff has brought his action against the wrong party defendant. This action, therefore must be dismissed as to Steak N Shake, but without prejudice to refiling against the proper defendant.

Accordingly,

IT IS HEREBY ORDERED that defendant's Motion to Dismiss, [Doc. No. 13], is granted.

IT IS FURTHER ORDERED that this matter is dismissed, without prejudice to refiling against the proper party defendant.

Dated this 4th day of October, 2006.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE